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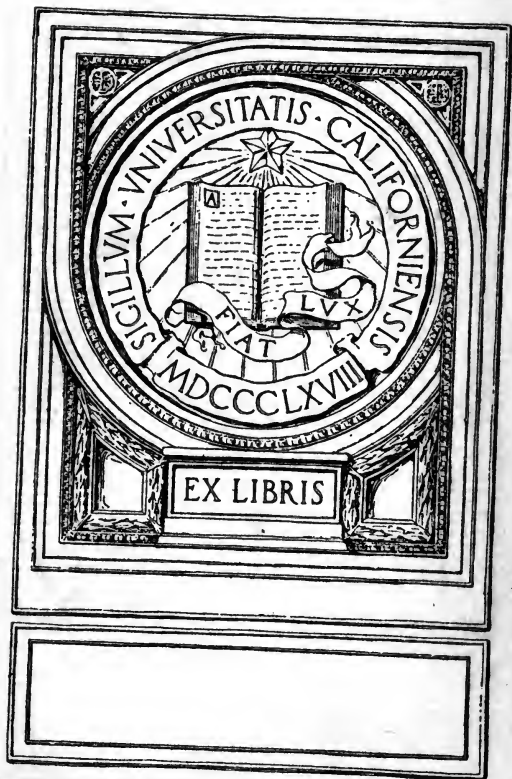
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THE PRACTICE AND LAW
OF EXCESS PROFITS DUTY

WILLIAM SANDERS

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THE PRACTICE AND LAW OF EXCESS PROFITS DUTY

BY

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PREFACE.

THE exceptionally momentous financial effect of the Excess Profits Duty renders it of vital significance that the many statutory relief provisions be observed. The Act is a war measure, and, therefore, could feasibly introduce a certain amount of inequity, but, in the passage through Parliament, extensive amendments secured the maximum of justice consistent with sane workability. The Board of Inland Revenue and the Board of Referees are vested with wide discretionary powers, so that the possibility of the evolution of hard technical points is minimised. It should, however, be noted that claims be made for the applicable concessionary benefits, as the Revenue, if the Income Tax procedure is followed, will not advance any point of relief. The general scheme of the Duty is that the State appropriates half of the difference between the profits of trading periods ending after the commencement of the war, and the standard of profits applicable prior to the war. While the former is based on actual profits, the latter is calculated on the average of pre-war years, but a percentage on the capital may be substituted for such pre-war average. Provision is made for increased and decreased capital, exceptional depreciation, &c., so that there is a welcome absence of a hard and fast rule which would tend to inequity. It is hoped that the work may prove of assistance to the Accountancy and other professions in the settling of liability to the Duty.

WM. SANDERS.

LICHFIELD.

19th January 1916.

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Practice and Law of Excess Profits Duty.

CHAPTER I.

THE Excess Profits Duty introduced by the Finance (No. 2) Act, 1915, and which will be re-enacted annually during the continuance of the conditions giving rise to the excess profits, is a tax on the excess of profits made in trading years or periods ending after the commencement of the war—4th August 1914—over the ordinary profits made before that date, irrespective of whether the increased profits are made owing to the existence of the war or not, but the first £200 of the excess is exempted.

It is, obviously, impossible to determine with precision the exact applicable profit which obtained prior to the war, as the year or years in question may not have been *ordinary* years of trade, so that in order to secure uniformity, which is essential to the imposition of any tax, a prescribed pre-war basis, statutorily termed the “pre-war standard,” has been adopted. Certain

exceptions are permitted in order to alleviate or remove specific inequities, but the basis of assessment is only intended to give an approximation to what is the actual excess.

The assessments are to be made by the Board of Inland Revenue, and the Surveyor of Taxes will attend to local matters. The taxpayers' rights cover appeal to the local or Special Commissioners of Taxes, while on specific points (p. 28) there is an appeal to an independent Board of Referees.

The Excess.

The assessment to the duty is, by Section 38, to be made on 50 per cent. of the difference between (a) the profits of any "accounting period," i.e. trading period ending *after* 4th August 1914 and *before* 1st July 1915, less £200, and (b) the pre-war standard of profits. This is illustrated by the following example, which assumes the pre-war standard to be arrived at on the principles given at p. 22.

Profit of Year to 31st December 1914	..	..	£
Less Exemption	..	..	4,000
			200
			<hr/>
			3,800
Less Pre-War Standard	..	..	2,000
			<hr/>
			50%)1,800
Excess Profits Duty	..	..	£900
			<hr/>

The Accounting Period.

The "accounting period," which in the above example is the trading year to 31st December 1914, is statutorily defined as the period for which the accounts *have been made up*, but in the following cases the Board of Inland Revenue is empowered to prescribe the period and ending thereof, subject to the restriction that the period must be not less than six months or more than twelve months :—

- (a) When the accounts have not been made up for any definite period.
- (b) When the accounts have not been made up for the *usual* period.
- (c) When a year or more has elapsed without accounts being made up.

The Board of Inland Revenue is, therefore, only empowered to specify the length and ending of a period when the accounts ending after the war have not been made up for the *usual* "period," so that an alteration of the *ending* of a period is not prohibited so long as the *period* is the same; thus the changing of the date of making up annual accounts from 31st December to 30th June, when e.g. stock is taken half-yearly, is not negatived if the new period is the same as the old one, viz. a year.

The references in Section 38 to "period" assume that word to relate solely to a period of time irrespective of the *ending* unless specifically mentioned.

When the accounting period is less than a year the exemption of £200 and the pre-war standard are proportionately reduced, thus in the example at p. 2, if the profit of £4,000 were for nine months the assessment would be as follows :—

Profit, 9 months to 31st December 1914	£	4,000
Less Exemption ($\frac{3}{4}$ of £200)	150	
	<hr/>	
Less Pre-War Standard ($\frac{3}{4}$ of £2,000)	3,850	
	<hr/>	
	50%)	2,350
Excess Profits Duty	<hr/>	£1,175
		<hr/>

Application of the Duty.

The assessment is to be made by Section 45 (2) on "any person for the time being "owning or carrying on the trade or "business" after commencement of the war, and the following rules are also prescribed :—

(1) *Business ceased.* Assessment on the person who owned or carried on the trade or business, or acted as agent, immediately before cessation.

(2) *Change of ownership.* The "accounting period" may, if the Board of Inland

Revenue think fit, be taken as ending on the date of change, and the assessment be made on the owner or agent up to or at such date. See also p. 27.

Subsidiary Companies. In the case of subsidiary companies when the parent company owns, either in its own name or that of a nominee, the *whole* of the *ordinary* capital of another company *in the same trade*, or so much of that capital as a single shareholder can hold "under the general law," the subsidiary company is, under the Fourth Schedule, to be treated as a branch of the parent company and a joint assessment made. This may have a vital effect on the assessment, and only *one* exemption of £200 is deductible. Assume the profits of (a) the parent company and (b) the subsidiary company to be as follows :—

			(a)	(b)
			£	£
Year to 31st December 1911	..	..	5,000	100
"	"	1912	500	2,000
"	"	1913	2,000	3,000
"	"	1914	10,000	2,800

The results of treating the companies separately (c), and jointly (d), are as follows : the pre-war basis being arrived at as at p. 22 :—

	(a)	(c)	(b)
	£		£
War Profit	10,000		2,800
Less Exemption ..	200		200
	<hr/>		<hr/>
Less Pre-War Standard	9,800		2,600
	3,500		2,500
	<hr/>		<hr/>
	50%)6,300		50%)100
Excess Profits Duty ..	£3,150		£50
	<hr/>		<hr/>
	£3,200		
	<hr/>		
	(d)		
	£		
War Profit	12,800		
Less Exemption ..	200		
	<hr/>		
Less Pre-War Standard ..	12,600		
	5,050		
	<hr/>		
	50%)7,550		
Excess Profits Duty ..	£3,775		
	<hr/>		

The reason of the difference is in the computation of the pre-war standard, for which the two *best* of the three last pre-war years are averaged. When assessed separately (a) the parent company and (b) the subsidiary company, and when jointly (c) the pre-war standards are arrived at as follows :—

	(a)		(b)		(c)
	£		£		£
1911 ..	5,000	1912 ..	2,000	1911 ..	5,100
1913 ..	2,000	1913 ..	3,000	1913 ..	5,000
	<hr/>		<hr/>		<hr/>
	2)7,000		2)5,000		2)10,100
	<hr/>		<hr/>		<hr/>
	£3,500		£2,500		£5,050
	<hr/>		<hr/>		<hr/>

Two or more Businesses.

Under Section 101 of the Income Tax Act, 1842, a loss on one business may be set off against the *average* assessable profit

on another business in the same ownership. The Board of Inland Revenue has power, under Section 45 (7), to adopt any income-tax rules, and, under Section 40 (1), profits are to be ascertained on income-tax principles, so that Section 101 should operate, but it only applies to an actual *loss* in one of the businesses, as e.g. a *reduced* profit would not affect the resultant income-tax liability whether such profit was included with that of the other business or not, but with Excess Profits Duty a profit less than the pre-war standard is equivalent, in effect, to a loss, as the Duty only relates to that *part* of the profits in excess of a fixed pre-war standard. A statement has been made in the House of Commons that a set-off will be allowed.

CHAPTER II.

Profits Chargeable.

The Duty does not extend to every class of profits assessable to income-tax, but it does not apply when income-tax is *not* chargeable. Liability attaches, by Section 39, to "*all trades or businesses* of any description" (a) carried on in the United Kingdom, or (b) owned *or* carried on outside the United Kingdom by persons ordinarily resident in the United Kingdom. Inclusion is expressly made of the following :—

(1) Any person "taking commissions in "respect of any transactions or services "rendered."

(2) Any agent "of any description" except a commercial traveller, or an agent remunerated wholly by a fixed and definite sum not dependent upon the amount of business done or any other contingency.

The Act exempts commercial travellers irrespective of the basis of remuneration. The reference to remuneration being of a fixed sum, only relates to "agent," as travellers are isolated.

Exceptions.

The following are excepted from liability to the Duty :—

- (a) Husbandry *in the United Kingdom*.
- (b) Offices and employments.
- (c) Professions where the profits are dependent mainly upon personal qualifications, and where capital expenditure is not required or is comparatively small in amount.

Apart from the said specific exceptions the duty is of universal application and extends to municipal undertakings and e.g. co-operative societies. The following special factors are introduced by the Fourth Schedule in connection with those concerns :—

Local Authorities.

The total amount required to be raised (out of rates or otherwise) for sinking fund purposes in connection with the trade or business assessed is deductible.

Co-operative Societies.

7 With societies registered under the Industrial and Provident Societies Acts, such as co-operative societies, there are no “profits” in the commercial acceptance of the term, and the basis of assessment to Excess Profits

Duty is the excess of (a) over (b) multiplied by the number of members in the "accounting period" (p. 3):—

- (a) Profits per member for the accounting period (including any surplus arising from transactions with members).
- (b) The like profits per member in the pre-war trading year or average (p. 22).

Taking the trading year, i.e. the accounting period, as ending on 31st December 1914, the assessment would be arrived at as follows on the given figures:—

					No. of Members		Profit per Member		
							£	s	d
1911	..	..	..	..	1,000	..	6	0	0
1912	..	..	..	..	1,500	..	5	10	0
1913	..	..	..	..	1,600	..	5	0	0
1914	..	..	..	..	2,000	..	8	0	0

On the principles applicable to ascertainment of the pre-war basis (p. 22), the two best of the three pre-war years, viz. 1911 and 1912, would be adopted, giving a pre-war average of £5 15s. The assessment would, therefore, be as follows:—

					£	s	d		
(a) War Profit	..	..	..	..	8	0	0		
(b) Pre-War Standard	..	..	..	..	5	15	0		
					<hr/>				
					2	5	0	×	2,000
								£	4,500
					<hr/>				
Profit	..	..	..	..	£
	..	..	..	..	4,500				
Less Exemption	..	..	..	..	200				
					<hr/>				
					50%				
					14,300				
					<hr/>				
Excess Profits Duty					£2,150				
					<hr/>				

Shipping Companies.

The Fourth Schedule contains a provision which covers e.g. shipping companies. It provides that when a business is confined to the management of any particular assets and there is power to substitute other assets, such a substitution shall not constitute a change of ownership (see p. 27), but, where such substitution has been carried out by the sale of assets and purchase of other assets, the capital shall be taken to be increased or decreased (see p. 32) only by the amount of the difference between the price of the assets purchased and the price obtained for the assets sold. This prevents e.g. a ship purchased for £100,000 before the war being sold for £200,000 now, and the latter being taken as capital.

Basis of Profit.

Profits for Excess Profits Duty are, by Section 40, to be ascertained separately, but on the same principles that are applicable to income-tax with certain specified exceptions. Income-tax profits have been judicially determined in *Usher's Wiltshire Brewery Co., Lim. v. Bruce* (1914), in the House of Lords, to be *commercial* profits subject to non-deduction of specified expenses such as those attributable to capital, viz. capital withdrawn, sums employed as

capital, wasting assets, capital employed in improvement of premises occupied for the trading purposes and expenses not "wholly and exclusively" laid out for the purposes of the business.

Deductions.

Under the Income Tax Acts no deduction is allowed for the following, as tax is deducted by the payer:—

(1) Interest on money borrowed for the purpose of the business.

(2) Rent and royalties and other payments subject to deduction of tax.

For Excess Profits Duty, however, these items are to be deducted both from the pre-war profits and the war profits, while profits arising from lands and buildings forming part of the assets, which are excluded for income-tax purposes as they are separately assessable under Schedule A, are to be included for Excess Profits Duty.

Specific provision is made in the Fourth Schedule that deductions for the following shall only be such as are allowable under the Income Tax Acts, *and only of such amount as the Board of Inland Revenue may determine* to be "reasonably and properly

“attributable to the year or accounting period.”

- (a) Wear and tear.
- (b) Expenditure of capital nature on renewals.
- (c) Such expenditure for development of the trade or business or otherwise in respect of the trade or business.

No deduction is permissible for the payment of, or liability to pay, Income-tax or Excess Profits Duty, but deduction is allowed for any foreign or colonial Excess Profits Duty or similar tax.

Modification of Fourth Schedule.

It is provided by Section 41 (3) that the Fourth Schedule, which prescribes the basis of ascertaining profit (both pre-war and war profit) and also defines capital, may be modified, on application to the Board of Inland Revenue, in the undermentioned cases, and the modification is to be such as the said Board may think necessary “to meet the *particular case*.” The taxpayer has a further right of requiring the matter to be determined by the Board of Referees, who are vested with the same modifying

powers as the Board of Inland Revenue. The cases involved are as follows :—

(1) Change in constitution of a partnership.

(2) Postponement or suspension, owing to the war, of renewals or repairs.

(3) Exceptional depreciation or obsolescence of assets used in the trade, due to the war.

(4) Provision, in connection with the war, of plant which will not be required after the war for the purposes of the trade or business.

(5) Any other *special circumstances* specified in regulations made by the Treasury.

See also p. 28.

Directors' Remuneration.

For income-tax, directors' remuneration is, in many cases of private limited companies where practically all the shares are held by one man, varied so as to absorb the profits, thus leaving nothing chargeable under Schedule D at the *unearned* rate, but securing assessment under Schedule E at the *earned* rate on the directors personally. The Excess Profits Duty does not extend to employments, so that liability could have been escaped by such disposal of profits had the Act made no provision for such circumstances. The Fourth

Schedule provides, however, that the deduction for remuneration of directors, managers, and persons concerned in the management of the trade or business shall not exceed the sums allowed in the last pre-war trading year, "or a proportionate part thereof as the case requires," unless the Board of Inland Revenue otherwise direct in the following cases :—

(1) Special circumstances.

(2) The remuneration of "any managers or managing directors" depending upon the amount of profits.

Artificial Disposal of Profit.

It is laid down by Section 44 (3) that no fictitious or artificial transaction or operation "for the purpose of avoiding the payment of Excess Profits Duty" shall be entered into or carried out, and any such act *before* the commencement of the Act shall be voluntarily disclosed to the Board of Inland Revenue. A fine not exceeding £100 is leviable on summary conviction, and this applies to (a) any transaction *after* the commencement of the Act *whether* disclosed or not, and (b) any undisclosed transaction *before* the said commencement. ✓

The Fourth Schedule prohibits deduction in respect of such *part* of the transaction or

operation that has artificially reduced the profits.

Losses in Pre-war Years.

When the *net result* of the last three pre-war trading years has been a loss and (a) the pre-war standard is a capital percentage and (b) part of the profits have been applied in extinction of that loss, the war profits may be reduced by the amount of the profits so used. Assume the profits to be as follows, and the capital £20,000, with an applicable percentage of 7 :—

				£	£
Year to 31st December	1911	..	..	1,000	
"	"	1912	..	200	
"	"	1913	..	..	loss 2,000
"	"	1914	..	4,000	

The three pre-war years show the following result :—

						£	£
Loss, 1913	..	..	..	..	..	1,000	2,000
Profits, 1911	..	..	..	..	..	200	1,200
" 1912	..	..	..	..	..
Net Loss							<u>£800</u>

The assessment to Excess Profits Duty would, therefore, be as follows :—

Profit, Year to 31st December 1914	..	..	..	£	4,000
Less Loss	..	..	..	£800	
Exemption	..	..	..	200	
				<u>1,000</u>	
					3,000
Less Pre-War Basis—7% on £20,000	..	..	..	1,400	
				<u>50%) 1,600</u>	
Excess Profits Duty..	..	..	..	£800	

War Losses.

The profits of the whole period during which the war continues are to be taken as an entity, and Section 38 (3) provides that when the profits of any "accounting period" ended after 4th August 1914 "have not reached the point which involves liability to Excess Profits Duty" or a loss has been sustained, repayment may be claimed of such Excess Profits Duty paid in respect of any previous accounting period as will make the total duty paid *by him* "during the whole period accord with his profits or losses during that period," or it may be claimed to set-off against the duty on any future accounting period such an amount as will attain the desired end. The provision is demonstrated by the following example, which assumes the war to last three years.

				Profits	Losses
				£	£
Year to 31st December	1911	..	..	4,000	
"	"	1912	..	5,000	
"	"	1913	..	4,000	
"	"	1914	..	20,000	
"	"	1915	..	..	8,000
"	"	1916	..	12,000	

The total profits for the period of the war are, therefore, £24,000, and the *total* duty is to be paid on £24,000—three years' exemptions (£600). The pre-war basis would be as follows :

1912	..	..	..	..	..	£ 5,000
1913	..	..	..	..	..	4,000
						<u>2)9,000</u>
						<u>£4,500</u>

The assessments would be as follows :—

1915-16.						
Profit	..	..	..	..	..	£ 20,000
Less Exemption	..	..	..	..	..	200
						<u>19,800</u>
Less Pre-War Basis	..	..	..	..	..	4,500
						<u>50%)15,300</u>
Excess Profits Duty	..	..	..	..	..	<u>£7,650</u>

1916-17.

The profits of the two years are thus :—

1914	..	..	..	..	..	..	£ 20,000
1915	..	..	..	..	..	..	8,000
							<u>12,000</u>
Less 2 years Exemption	..	..	..	..	..	..	400
							<u>11,600</u>
Less 2 years Pre-War Standards	..	..	..	..	..	..	9,000
							<u>50%)2,600</u>
Duty for 2 years	..	..	..	..	..	..	<u>£1,300</u>

Repayment is, therefore, made as follows :—

Duty Paid in 1915	..	..	..	..	..	✓ £ 7,650
" Due for 1915 and 1916	..	..	..	..	..	1,300
Repayment	..	..	..	..	..	<u>£6,350</u>

1917-18.

Profit	..	..	..	..	..	£ 12,000
Less Exemption	..	..	..	..	..	200
						<u>11,800</u>
Less Pre-War Basis	..	..	..	..	..	4,500
						<u>50%)7,300</u>
Excess Profits Duty	..	..	..	..	..	<u>3,650</u>

The intention being to tax the war profits as a whole, the total Duty paid should equal that on the total profits. The latter are £24,000, and the result should be as follows :—

Total Profits	£	24,000
Less 3 years Exemptions..	£600	
" " Pre-War Standards	13,500	
	<u>14,100</u>	
	50%)	9,900
	<u>£4,950</u>	

The Duty actually paid is £4,950, made up as follows :—

1915-16	£	7,650
1917-18	3,650	
	<u>11,300</u>	
Repaid 1916-17	6,350	
	<u>£4,950</u>	

The equity of this course may be seen from assuming a total profit of the *same amount*, viz. £24,000, but spread evenly over the three years. Each year's assessment would then be as follows, giving the same total of £4,950.

Profit	£	8,000
Less Exemption	200	
	<u>7,800</u>	
Less Pre-War Standard	4,500	
	<u>50%)</u>	3,300
Excess Profits Duty	<u>£1,650</u>	

The provision also applies to the case of two or more accounting periods of less than

✓

twelve months each between 4th August 1914 and 1st July 1915, but it is not limited to that. The subsection relates to “*any*” “accounting period which ended after 4th “August 1914,” and does *not* include the words “and before 1st July 1915.” The subsection has in view the stated intention of continuing the Duty. The provision for making the Duty accord with the total profits for the “whole period” refers, in the latter words, to the *period* from commencement of the Duty to the end of the then current accounting period, as e.g. in the above example of the 1916-17 assessment.

Investments.

Deduction is allowable in respect of income from investments except in the case of life assurance businesses or other businesses where the principal business consists of making investments, in which exceptions the income is to be included and the following provisions attach :—

- (1) Any variations in the value of the investments which the Board of Inland Revenue determines not to be due to a variation in profits must be included.

- (2) Where income has been derived from profits in respect of which any payment or repayment of Excess Profits Duty has been made, such deduction or addition is to be made as will make "proper allowance" for the payment or repayment.

Contracts.

When a contract extends into two or more "accounting periods" and is only partially performed in an accounting period, there must be attributed to each of the accounting periods such proportion of the entire profits or loss, "or estimated profits or loss" in respect of the complete contract, as shall be *properly attributable* to such periods, "having regard" to the portion of the contract performed in each period.

✓

CHAPTER III.

Pre-War Standards.

The pre-war profits are to be calculated on the same principles " and subject to the same provisions " as the war profits, i.e. for the accounting period.

The pre-war standard is, by Section 40, composed of the two following *alternative* bases :—

1. Profits standard.
2. Percentage on capital standard.

The higher the pre-war standard the smaller is the assessment, so that the method giving the larger figure is adopted.

Profits Standard.

The pre-war standard based on profits is, by Section 40, the average of any two of the three last pre-war years, the power of selection being vested in the taxpayer, so that the two best years are adopted, as shown in the following example :—

Year to 31st March 1912	..	..	..	..	£ 3,000
" " 1913	..	..	..	..	1,000
" " 1914	..	..	..	..	4,000
" " 1915	..	..	..	..	6,000
£					
1912	..	..	..	..	3,000
1914	..	..	..	..	4,000
					27,000
Pre-War Standard..					£ 3,500

“ Pre-war trading year ” is defined in Section 40 (2) as being the *year* ending at the end of the *last* accounting *period* before 5th August 1914, and the “ three last pre-war trading years ” are the three *years* ending at the “ three corresponding times.” The “ accounting period ” need not necessarily be a year.

Capital Standard.

When the above pre-war standard is less than a percentage on the capital of the business at the end of the last pre-war trading year, i.e. 31st March in the above example—which percentage is *prima facie* fixed by the Act as 6 for companies and 7 for other concerns, but is subject to alteration as at p. 28—that percentage on the capital, statutorily termed the “ percentage standard,” becomes the pre-war basis on the taxpayer so claiming. Assuming that the capital at 31st March 1914 was £50,000, and the applicable percentage 8, the “ percentage standard ” would be £4,000, and being larger than the profits standards, would be adopted, giving an assessment as under :—

Profit, Year to 31st March 1915	..	..	..	£
Less Exemption	..	..	..	6,000
				200
				<hr/>
				5,800
Less Pre-War Standard	..	..	..	4,000
				<hr/>
				50%)1,800
				<hr/>
Excess Profits Duty	..	..	..	£900
				<hr/>

Pre-war Depression of Trade.

In order to minimise the inequity attending a pre-war standard calculated on two of the three pre-war years, when those years were bad trading years resulting in small profits or in losses, it is provided by the Fourth Schedule that when it is proved to the satisfaction of the Board of Inland Revenue that the last three pre-war trading years have been years of abnormal depression, any four of the last six pre-war years may be adopted as the average for the pre-war basis. To constitute "abnormal depression" the average of the last three pre-war trading years must be at least 25 per cent. less than the average of the three years preceding those three years. Assume the profits to be as follows and the trading year to end on 30th September annually :—

									£
1908	..	..	..	..	..	..	..	..	4,000
1909	..	..	..	..	..	..	..	..	3,000
1910	..	..	..	..	..	..	..	..	2,000
1911	..	..	..	..	..	..	..	..	800
1912	..	..	..	..	..	..	..	..	1,800
1913	..	..	..	..	..	..	..	..	400
1914	..	..	..	..	..	..	..	..	5,000

The respective averages of (a) the three years to 1913 and (b) the three years to 1910 are £1,000 and £3,000, so that the former complies with the provision by being at least 25 per cent. less than the latter, therefore the assessment would be as follows :—

Profit, Year to 30th September 1914	£	5,000
Less Exemption	200	
	<hr/>	4,800
Less Pre-War Standard—		
1908	£	4,000
1909	3,000	
1910	2,000	
1912	1,800	
	<hr/>	4)10,800
	2,700	2,700
	50%)2,100	
Excess Profits Duty	£1,050	

New Businesses.

Specific provision is made for new businesses set up *before* the commencement of the war as follows, when, owing to recent commencement, there have only been the pre-war *trading* years named :—

(1) *Only two pre-war years* (i.e a commencement in 1911 when the trading year is the calendar year, or in the *year* to 30th September 1911 when that year is adopted). The average of the two years is to be taken unless the taxpayer desires to adopt the last of those two years, so that if the last year gives the larger profits, as would generally be the case with a new business, that profit may form the pre-war standard.

(2) *Only one pre-war year.* The profits of that year have to be taken.

(3) *Not one pre-war year.* The applicable percentage on the average capital employed

during the "accounting period," thus this provision would apply to the case of a business commencing on e.g. 1st July 1913, when the trading year or the accounting period is to 31st December.

Assuming the calendar year to be the trading year, the above provisions would apply respectively to commencements in 1911, 1912, and 1913, and the following examples illustrate the working, the capital being taken as £10,000, and the applicable capital percentage as 6 :—

		(1)	(2)	(3)
		£	£	£
Half-year to 31st December	1911 ..	600		
Year	" "	1912 .. 1,000	(½ year) 500	
"	" "	1913 .. 2,000	2,000	(½ year) 1,000
"	" "	1914 .. 3,000	3,000	3,000

Pre-War Standard, 1913, £2,000; 1913, £2,000; capital £600.

New Agencies.

When a trade or business is an agency or business of a nature involving capital of a comparatively small amount, the pre-war standard is to be based on profits arising from "any trade, business, office, employment or profession, of any sort," whether liable to the Duty or not, carried on by the agent or other person before his new trade or business commenced as if it was the same business, but only to the extent to which the income from the former trade, &c., has been diminished.

Change of Ownership.

Under Section 45 (2) the Duty may be assessed up to the date of change of ownership (see p. 5).

The Fourth Schedule provides that change in ownership since the commencement of the three last pre-war trading years shall be treated as a new business (*ante*) except on the taxpayer claiming that the business should be treated as a succession, and thus ignore the change, in which case such modifications *shall* be made in regard to treatment as a new business, as will make the basis of computation of the pre-war standard the same as that of the "accounting period."

See also p. 5.

CHAPTER IV.

Capital.

The question of capital is one of particular moment, as the amount charged may be vitally affected by the definition of what constitutes capital. The connection of capital with the Duty is in two respects by Section 42 :—

(a) A percentage on capital may be substituted for profits as the pre-war basis (p. 23).

(b) The percentage—which is given in the Act as six for companies or other bodies corporate, and seven for sole proprietorships and partnerships—is determinable as regards *increase* by the Board of Referees separately for each of the following :—

- (1) Any *class* of trade or business.
- (2) Any *subdivision* of a trade or business based on either (a) any special feature, or (b) locality, if the Board of Referees is satisfied that the subdivision “ can properly be dealt with separately.”

Small Capital.

When, owing to the nature of a trade or business, the capital actually employed in the business is "small compared with the "capital necessarily at stake for that trade "or business," an application may be made to the Board of Referees, through the Board of Inland Revenue, to calculate the percentage standard by reference (a) to some factor other than the capital, or (b) to some additional factor.

Munitions.

The Board of Referees may also alter the treatment of capital for the pre-war standard of profits when that capital is employed in the manufacture of war materials or for munitions work, and could not be expected to be remunerative, or wholly remunerative, except in time of war, "in a business which "has been wholly or mainly carried on for "those purposes."

Board of Referees.

The procedure in obtaining the determination of the Board of Referees is by application to the Board of Inland Revenue, who, unless of opinion that the application is "frivolous or vexatious," or relates to matters already decided by the Board of Referees, must refer the case to the Board

of Referees, who may, by order, make the applicable amendment.

When an order is made the Act shall have effect from the date named in the order as if the percentage or standard named in the order was substituted for the statutory percentages of 6 and 7 (p. 23), and the substituted percentages apply for *all* purposes, such as new capital, commencement, &c.

Definition of Capital.

Capital is defined by the Fourth Schedule as follows :—

1. The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

(a) so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to any proper deductions for wear and tear or replacement, or for unpaid purchase money ; and

(b) so far as it consists of assets being debts due to the trade or business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for income-tax purposes ; and

- (c) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the trade or business, subject to any proper deductions for wear and tear or replacement.

Nothing in this Part of this Schedule shall prevent accumulated profits employed in the business being treated as capital.

2. Any capital, the income on which is not taken into account for the purposes of Part I of this Schedule, and any borrowed money or debts, shall be deducted in computing the amount of capital for the purposes of Part III of this Act.

3. Where any assets has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where a trade or business has been converted into a company and the shares in the company are wholly or mainly held by the person who was owner of the trade or business, no value shall be attached to those shares so far as they are represented by goodwill or otherwise than by material assets of the company unless the Commissioners of Inland Revenue in special

circumstances otherwise direct. Patents and secret processes shall be deemed to be material assets.

Debentures and invested capital are thus excluded, as are the interests thereon.

See p. 13 for modification of above definition.

Pre-war Basis.

See p. 23 for ascertainment of the pre-war standard on the basis of capital.

Variation of Capital.

Provision is made in Section 41 for variation of capital, in ascertaining the *war profits*, in the following cases :—

(1) Increase during the “accounting period,” i.e. the war profits period.

(2) Decrease during the “accounting period,” i.e. the war profits period.

(3) New capital employed for the first time within three years before 1st August 1914, and which has only commenced to be remunerative or fully remunerative in the “accounting period.”

When e.g. the capital used in the war profits year is less or more than that employed prior to the war, it is obvious that some allowance should be made, when

arriving at the *excess*, for the profits resulting from such increased capital which was not available in the pre-war years forming the pre-war standard.

See also p. 55.

“ Increase ” and “ decrease ” are statutorily defined as follows in Subsection 3 :—

(a) *Where the pre-war standard is a profits standard.* If the capital employed during the war-profits period exceeds or is less than the average capital employed during the pre-war trading year or years which have been adopted in ascertaining the profits standard. Assume that the pre-war standard is based on the calendar years 1911 and 1913, and that the capital was as follows :—

						£
At January 1	1911	..	..	..	..	10,000
" June 30	1911	..	..	..	..	15,000
" "	1912	..	..	..	..	20,000
" "	1913	..	..	..	..	15,000
" "	1914	..	..	..	..	20,000

The *average* of 1911 and 1913 must differ from the 1914 capital in order to allow an adjustment. The respective *average* capitals are, therefore, as follows :—

Pre-War Year,	1911	..	..	..	..	£
" "	1913	..	..	..	..	12,500
						17,500
						2)30,000
						£15,000

See p. 37 as to construction of the above.

(b) *Where the pre-war standard is a capital percentage standard.* If the capital employed in the war profits period exceeds or is less than the capital on which the percentage standard has been calculated, i.e. the capital at the end of the last pre-war trading year, viz. 31st December 1913, when the trading year is to 31st December (see p. 23). Thus assume that the capital at 31st December 1913 was £10,000, and the pre-war profits have a smaller average than the percentage on that capital—when the pre-war standard would be based on capital—while the capital was £12,000 at 31st March 1914, and £16,000 at 30th September 1914. The average capital in the war-profits year to 31st December 1914 would thus be :—

								£
								10,000
Add	$\frac{3}{4}$	of 2,000	..	..	..	..	=	1,500
"	$\frac{1}{4}$	of 4,000	..	..	..	..	=	1,000
								<u>12,500</u>

There would, therefore, be an increase of £2,500, and with an applicable percentage of 6 the 1914 profits would be reduced by £150.

Increase of Capital.

Section 41 (1) enacts that when capital has been increased during the "accounting period" the profits of the latter shall be

reduced by the applicable percentage on the amount of the increase, and if the increased capital is used for part only of the "accounting period," the increase shall be proportionately decreased. Assume the following figures to apply :—

<i>Profits—</i>					£
Year to 31st December	1911	..	..	..	5,000
"	" 1912	..	..	..	6,000
"	" 1913	..	..	..	5,000
"	" 1914	..	..	..	10,000
<i>Capital—</i>					
At January 1	1911	..	..	..	30,000
" June 30	1912	..	..	..	40,000
" September 30	1913	..	..	..	24,000
" June 30	1914	..	..	..	50,000

In the first place, to constitute an "increase of capital," the average capital in the pre-war years adopted for arriving at the pre-war basis must be less than the capital of 1914. The pre-war standard may be based on 1911 and 1912, or 1912 and 1913, as the profits of 1911 and 1913 are the same, but when this is the case or when the profits are approximately equal, the question of increased or decreased capital should be observed. If e.g. the average capital of 1911 was £50,000, that of 1912 £50,000, that of 1913 £30,000, and the 1914 capital was £42,000, the inclusion of 1911 in the pre-war basis would show *no increase* on 1914 but a *decrease*, whereas 1912 and 1913 would have an average of £40,000, and, therefore, allow deduction from the 1914 profits.

Adopting in the previous example 1911 and 1912 for the pre-war basis, the former year giving a lower *average* capital than 1913 (which latter gives £36,000), the average capital would be as follows :—

						£	£
1911	..	..	..	..	..		30,000
1912	..	..	..	..	..	30,000	
Add $\frac{1}{2}$ of £10,000	..	..	..	..	..	5,000	
						<hr/>	35,000
							<hr/>
							2)65,000
							<hr/>
Average Pre-War Capital..	..	..					£32,500
							<hr/>

Assuming the applicable capital percentage for the class of trade in question p. 23) to be 7, the adjustment on account of capital would be as follows :—

The capital for the six months to 30th June 1914 was £24,000, and from that date to 31st December 1914, £50,000. The adjustment is thus :—

				£
(a) 1st 6 months	..	Pre-War Capital	..	32,500
		War Capital..	..	24,000
				<hr/>
Statutory decrease	..	..		£8,500
				<hr/>
(b) 2nd 6 months	..	War Capital..	..	50,000
		Pre-War Capital	..	32,500
				<hr/>
Statutory increase	..	..		£17,500
				<hr/>

The decrease (a) and the increase (b) were each for $\frac{1}{2}$ year, therefore the provision of Section 41 that if the capital has been decreased or increased for *part* only of the year the addition to or deduction from the war profits shall be proportionately

reduced applies, giving a decrease of £4,250 and an increase of £8,750, which fulfils the requirements of the subsections relating to increase and decrease, and leaves a net increase of £4,500, which, at 7 per cent., gives £315 to be deducted from the war profits of the year to 31st December 1914. The result may be obtained as follows by taking the difference between the pre-war average capital and the *average* capital of the war profits year :—

6 months @ £24,000 =	£12,000	per year
6 " @ £50,000 =	£25,000	"
1914 average ..	£37,000	
Pre-war " ..	32,500	
Net increase ..	<u>£4,500</u>	
<i>Assessment.</i>		
War Profit	£	£
Less Exemption	200	10,000
" on Account of Capital ..	315	
		<u>515</u>
		9,485
Less Pre-War Standard—	£	
1911	5,000	
1912	6,000	
	<u>2)11,000</u>	
	£5,500	5,500
		50%)3,985
Excess Profits Duty		<u>£1,992-10</u>

The construction of Subsection 3, referred to at p. 33, is of considerable moment. The subsection follows provisions enacting that the increase or decrease of capital *in the accounting period* shall produce a corresponding variation of the profits, and it

enacts that capital " shall be taken to be
 " increased or decreased . . . if the
 " capital employed in the trade or business
 " exceeds or is less than the average
 " amount of capital employed during the
 " pre-war trade years or year by reference
 " to which the profits standard has been
 " arrived at." Apart from this subsection,
 the increase or decrease would be the *actual*
 variation in the accounting period, and, as
 the subsection only provides that " capital
 " shall be taken to be increased or decreased
 " . . . if the capital " is less than a
 pre-war average, it could be contended that
 the subsection merely provides that no
question of increase or decrease can arise
 unless the pre-war average differs from the
 capital in the war profits period, and that
 the *basis* of allowance is that in Subsections
 1 and 2.

Decrease of Capital.

The provisions regarding decrease of
 capital are the same as those for increase,
 except that the war profits are *increased*
 with decreased capital.

Unremunerative Capital.

In the case of unremunerative capital
 employed in the trade or business for the
 first time within three years *before* 1st

August 1914, and which has only commenced to be remunerative or fully remunerative in the "accounting period," an amount equal to the applicable percentage on that capital is to be added to the *pre-war standard*, but when interest has been earned on the capital in question at a rate less than the applicable statutory percentage, the addition is only to be such an amount as will make the interest equal to the applicable statutory percentage.

CHAPTER V.

Returns and Assessment.

The Excess Profits Duty is to be assessed by the Board of Inland Revenue.

Returns.

The Board of Inland Revenue is statutorily empowered by Section 44 (1) to demand the following particulars from any person engaged in a trade or business to which the Act applies or who was so engaged during *any accounting period* or *pre-war trade year*.

- (a) Returns of the profits during the accounting period or pre-war trading years.
- (b) Such other particulars in connection with the trade as the said Board may require.

The returns and particulars are required to be furnished within two months after requirement, and there is a fine on summary conviction not exceeding £100 and a further fine not exceeding £10 for every day during which the offence continues after conviction.

Notice of Liability.

Under Section 44 (2) every person chargeable to Excess Profits Duty is required under the same penalties as attach to returns (*ante*) to give notice, that he is liable, to the Board of Inland Revenue, before 31st January 1916.

Liquidators of companies which are being wound up at the time of commencement of the Act, or are wound up after such commencement, *and* which are chargeable to the Duty are also required, under the same penalties, to give the notice.

Under Section 45 (4) in the case of a company wound up after the commencement of the Act and before 1st July 1916, and which company would be liable to the Duty if the Act were continued and extended to accounting periods ending before 1st July 1916, the liquidator is required to give notice to the Board of Inland Revenue, and to set aside such sum out of the assets *as the said Board may direct*, as being sufficient to meet any future liability.

Recovery of the Duty.

The Duty is payable *at any time*, not being less than two months after it is assessed, and the Board of Inland Revenue

may in any case allow payment by instalments. Recovery may be made as a debt due to the Crown, and if less than £50, also summarily as a civil debt.

The fact of an appeal pending is not to interfere with payment except when the Board of Inland Revenue otherwise directs, but repayment is to be made, where applicable, "as soon as possible" after the decision on appeal.

Regulations.

The Board of Inland Revenue is statutorily empowered to make regulations regarding the following points :—

(a) Assessment and collection.

(b) Hearing of appeals.

The regulations may "apply and adapt" any enactments—which do not otherwise apply—relating to assessment and collection of income-tax and the hearing of appeals as to income-tax by the local or Special Commissioners.

Appeals.

A right of appeal is given by Section 45 (5) to the local or¹ Special Commissioners of Income Tax, who are authorised to summon witnesses and examine them upon oath.

A case for the opinion of the High Court, as provided for income-tax in Section 59 of the Taxes Management Act, 1880, applies (with the necessary modifications) to the following :—

(1) Excess Profits Duty appeals.'

(2) Reference to Board of Referees (pp. 13, 28).

(3) Rehearing of an appeal in Ireland.

The latter refers to the provision of the Act that the power, under the Income Tax Act, 1853, to require an appeal to the Special Commissioners to be reheard by the County Court Judge, or chairman of Quarter Sessions, or Recorder, shall apply to Excess Profits Duty to Ireland.

Applications for modification of the statutory provisions may be made to the Board of Referees, which is an independently constituted commercial body (see p. 49), in the following cases :—

1. Modification of Fourth Schedule (p. 13), Section 40 (3).

2. Increase of capital percentage (p. 28), Section 42.

CHAPTER VI.

Mineral Rights.

The Excess Profits Duty extends, by Section 43, to the following when not part of the assets of any trade or business, and when they vary in accordance with the price of the minerals :—

- (1) Mineral Royalties.
- (2) Mineral Wayleaves.

Payment is to be made in the form of an addition to Mineral Rights Duty, and the assessment is to be made by the Board of Inland Revenue while the Duty is recoverable as a debt due to the Crown.

The terms employed in the Act are to have the same meaning as in the Finance (1909-10) Act, 1910, which imposes Mineral Rights Duty, and the following are applicable :—

Mineral Wayleaves includes any wayleaves, air leave, water leave, or right to use a shaft, whether above or below ground, for the purpose of access to or the conveyance of the minerals, or the ventilation or drainage of the mine or otherwise, in connection with the working of the minerals.

Basis of Assessment.

The assessment is to be based on the difference between (a) the amount of rent payable in respect of the "accounting period," i.e. any working year ending on any date after the commencement of the war, and (b) the pre-war standard of rent. Fifty per cent. of such difference is to be the Duty.

The pre-war standard of rent is the average of any two of the last three *pre-war rent values* selected by the taxpayer.

The "pre-war rent value" is statutorily defined as meaning, as respects each of the three years immediately preceding the first "accounting year," the sum to which the rent for the "accounting year" would amount if the rent, so far as variable in accordance with price, were based on the average prices governing payment of the rent in that year.

Superior Lessors.

When, in any accounting year, any amount is payable by the lessee of minerals or wayleaves to a superior lessor, as rent, that amount forms a deduction from the amount payable to the lessee as rent for that year, and a corresponding deduction on account/of such rent shall be made in computing the pre-war rent values.

Increment Value Duty.

Increment Value Duty paid forms a deduction from the rent payable, in the year in which that duty is paid. The pre-war standard with which the rent for that year is to be compared, shall be correspondingly reduced.

Returns, &c.

The Board of Inland Revenue is authorised to require the following particulars :—

(1) Of any lease of minerals or wayleaves and the sums paid thereunder.

(2) Such other particulars as to the minerals or wayleaves as the said Board may require.

The provisions of the Finance (1909-10) Act, 1910, regarding returns are made applicable, and the particulars are required to be furnished within the time—not being less than 30 days—specified in the Board's notice. The penalty for non-compliance is not to exceed £50, and is to be recovered in the High Court.

Appeals.

The appeal against the assessment of Excess Profits Duty on minerals, rents, and wayleaves, is that prescribed by the

Finance (1909-10) Act, 1910, which enacts, by Section 33, that the appeal shall be referred to one of the panel of referees appointed under that Act. The referee is to determine *any matter* referred to him, in consultation with the Board of Inland Revenue and the appellant, *or any persons nominated by the Board and the appellant* respectively: The referee is further empowered to direct that any expenses incurred by one party to the appeal be paid by the other party.

There is a right of appeal to the High Court from the referee's decision.

The panel of referees is formed of persons qualified in the valuation of land and minerals.

CHAPTER VII.

General.

Secrecy.

Section 45 (8) provides that all Commissioners and other persons employed in connection with the assessment or collection of Excess Profits Duty shall be subject to the same obligations as to secrecy as they are subject to for income-tax and any oath taken in connection with the latter extends to Excess Profits Duty.

Deduction of the Duty from Income-tax.

The Excess Profits Duty is deductible in arriving at income-tax liability in order that income-tax may not be charged on that part of the profits taken by the Revenue in the form of the Duty. Section 35 provides that the Duty paid shall be deductible, in computing the profits of the *year which included the end of the "accounting period," in respect of which the duty has been paid*, thus a payment under the Act in respect of the year to 31st December 1914 would be deductible from the 1914 profits. When, however, the income-tax assessment has been made

before the Excess Profits Duty liability was ascertained, the Duty is to be reduced by such amount as the reduction of the income-tax would have amounted to. If there is no Duty, repayment is made to the taxpayer.

The Duty for the present year would, therefore, by deduction from the 1914 profits, come into the averages for 1915-16, 1916-17, and 1917-18, and also for adjustment under Section 133, as the section provides that the Duty shall be deducted "for the purpose of income-tax," which would cover Section 133. Section 35 enacts that the Duty shall be deducted "in computing the profits and gains," which latter term would appear to relate to the *assessment*, but Subsection 2 provides alternative methods of allowance when "in any income-tax year the profits or gains from which a deduction may be made under this section *come into computation*."

When repayment of Duty has been made (p. 17), that repaid amount is to be treated as income-tax profit for the year in which repayment is *received*.

Board of Referees.

The following have been made members of the Board :—

Mr. Duke, K.C., M.P., Chairman.

Lord Faber, Yorkshire.

Mr. Albert Illingworth, M.P.

Sir Clarendon Hyde, London.

Mr. A. F. Pease, Darlington.

Mr. J. H. Tritton, Manager of Barclay's Bank.

Mr. Leif Jones, M.P.

Mr. F. W. Gibbons, Tinsplate Manufacturer, South Wales.

Sir Charles Bine Renshaw, Chairman of the Caledonian Railway.

Mr. J. E. Fottrell, Director of the Royal Bank of Ireland.

Mr. Alexander Cooke, Flax and Yarn Merchant, Belfast.

The following Accountants :—

Sir H. Woodburn Kirby, President of the Institute of Chartered Accountants.

Mr. A. O. Miles, Manchester, Past-President of the Institute of Chartered Accountants.

Mr. R. H. March, Cardiff.

Mr. W. H. Cook, President Scottish Chartered Society of Accountants.

Mr. Joseph Gurney Fowler, Shipping Accountant.

Sir William Peat, Past-President of the Institute of Chartered Accountants.

Mr. C. Hewetson Nelson, President of the Society of Incorporated Accountants and Auditors.

Mr. W. T. Walton, West Hartlepool.

Mr. W. McLintock, Glasgow.

The following Merchants and Traders :—

Sir Jeremiah Coleman.

Mr. C. D. Morton, London.

Mr. Howard Williams, London.

Mr. W. Penrose-Green, Leeds.

Mr. L. F. Massey, Manchester.

Mr. Walter Tyzack, Sheffield.

Mr. J. A. Jones, Cardiff and Newcastle.

Mr. A. W. Faire, Leicester.

Controlled Trading Concerns.

The Act only charges Excess Profits Duty in respect of accounting periods which ended between 4th August 1914 and 1st July 1915, and the reason of the adoption of a period less than a year is that the Munitions of War Act, 1915, came into operation on 2nd July 1915, while, under that Act, the concerns in question have to hand over to the Crown certain excess profits so that the Finance (No. 2) Act, 1915, covers *all* concerns whether *now* controlled or not.

The Munitions of War Act, 1915, provides that trading establishments manufacturing munitions may be controlled by the Government, and *inter alia* any excess

profits must be paid to the Revenue. The owner of the business is allowed to retain profits equally the pre-war standard plus one-fifth.

Pre-war Standard.

The " standard amount of profits " is the average net profits of the two trading years completed next before the outbreak of war.

The Minister of Munitions is statutorily empowered by Section 5 (3) to substitute another amount if he so agrees with the trader, and, moreover, the Minister or the trader may require the matter to be determined by a Referee or Board of Referees.

The Munitions of War Act, 1915, allows Rules to be made regarding limitation of profits. The following relevant definitions are given in the Rules, which are dated 15th September 1915 :—

Controlled Establishment.

An establishment or *part* thereof controlled under order of the Minister of Munitions.

Period of Assessment.

Any period within the period of control for which profits are to be ascertained under the Act.

Standard Period.

The two trading years completed next before 4th August 1914.

Standard Amount of Profits.

Average profits of "standard period," or the standard otherwise determined (*ante*).

Audited.

By a Chartered or Incorporated Accountant or an accountant approved *in any particular case* by the Board of Trade.

The profits are only those of the controlled work, as they are to be the net profits *before* charging income-tax or interest or bringing into account profits in respect of assets not employed in the controlled establishment.

Date of Accounts.

It is provided that the accounts for any trading year or period which includes a "period of assessment" shall, unless the Minister otherwise directs, be made up to dates corresponding to those adopted in arriving at the pre-war standard, and, as nearly as possible, on the same basis.

Period of Assessment.

The "period of assessment" is not to exceed a year unless the Minister otherwise

directs in a particular case, and the Minister may, if and when he considers it necessary, fix the dates at which the period is to commence and terminate. The profits of the " period of assessment " are to vary in accordance with the length of the trading period ; thus if a " period of assessment " is six months and the accounts are made up annually, the net profits are half of those shown by the year's accounts.

In determining the net profits of a " period of assessment " the following items have to be considered and allowed for :—

(a) Exceptional wear and tear of plant, buildings, and machinery.

(b) Capital expenditure specially incurred for munitions work.

(c) Probable value to the controlled owner, at the end of the period of control, of any plant, buildings or machinery erected or installed, or other expenditure incurred for munitions work since 4th August 1914.

(d) Special provisions or terms of any contracts entered into between the Government and the trader.

(e) Any exceptional services rendered by the trader in connection with the controlled concern.

(f) Any *increase* of salaries, &c., of persons engaged in the management or direction of the controlled concern made since the end of the "standard period," or any steps taken since the end of that period which might decrease profits.

(g) Generally any other matter which the Minister or the Referee may consider material to be taken into account. The adjustments may be made from the pre-war standard or the "period of assessment."

Increase of Capital or Output.

Provision is made for adjustment in the following cases :—

(1) Where the average capital of the controlled concern during the period of assessment is greater than the average during the standard period. (See p. 33.)

Capital provided by the Government is to be excluded, but temporary loans, not so provided, and undivided ascertained profits are capital.

(2) Where the volume of output for the period of assessment is proportionately greater than the volume for the standard period. When the "period of assessment" and the trading year or period are not the same in length, the output of the latter is varied *proportionately*.

The trader may, on either of the above factors existing, require the *larger* of the following items to be added to the standard profits :—

(a) Such sum (in lieu of or, at the Minister's discretion, in addition to the one-fifth, p. 52) as shall equal 8 per cent. per annum on such amount as the Minister shall decide to be additional capital.

(b) Such sum (in lieu of or addition to the one-fifth as above) amounting to such fraction of the additional net profits which, in the Minister's opinion, might fairly have been earned in the *standard period* by an equivalent additional volume of output as the Minister shall decide will, under the circumstances, afford a reasonable return in respect of the additional volume of output.

Deductions for whole Period of Control.

Provision is made for treating the deductions of the whole period of control as an entity (see also p. 17). It is laid down that in determining the profits of the *final* period of assessment proper adjustments "in respect of the whole period of control" in regard to the adjustments for wear and tear, &c., at p. 54 may be made when not previously made.

Two or More Concerns.

The Minister is empowered to allow the profits or losses "of all or any other establishments" belonging to the same owner to be brought into account. (See p. 6.)

Returns.

Pre-war Years.

The trader is required to deliver, within six weeks of a request, *audited* accounts and particulars, and the trader has 14 days in which to object to the Minister's determination of the standard.

Period of Assessment.

Within three calendar months of the expiration of a trading year, or period covering a period of assessment, the trader must deliver the following:—

(1) *Audited* accounts and particulars for the trading year or period similar to those for the pre-war year (*ante*).

(2) A statement showing the adjustments (if any) claimed as at p. 54 for wear and tear, &c., or p. 55 for increased capital, &c.

(3) A declaration (which may be a statutory declaration if so required by the Minister) made by the trader and his auditor (or, in the case of a company, by

the chairman, managing director, or responsible officer and the auditor) declaring that the accounts are prepared strictly within the prescribed rules, except so far as is otherwise expressly declared therein, and that neither the trader nor such officer has been party or privy to any transaction which might prejudice the Revenue.

All balance sheets, accounts, and statements and books are to be subject to examination by an accountant nominated by the Minister, and plant, &c., by other nominated persons. The Referee may determine if desired information is necessary.

Appeals.

Objections to the pre-war standard or the profits of the period of assessment must be made within 14 days after notification of the amounts. The liability may be settled by a Referee. Payment is to be made within 14 days after the ascertainment of liability, and provisional payment may be required.

Penalties.

A fine not exceeding £50 for each offence is prescribed.

APPENDIX I.

FINANCE (No. 2) ACT, 1915.

PART III.—EXCESS PROFITS DUTY.

Charge of Excess Profits Duty.

38.—(1) There shall be charged, levied, and paid on the amount by which the profits arising from any trade or business to which this Part of this Act applies, in any accounting period which ended after the fourth day of August nineteen hundred and fourteen, and before the first day of July nineteen hundred and fifteen, exceeded, by more than two hundred pounds, the pre-war standard of profits as defined for the purposes of this Part of this Act, a duty (in this Act referred to as “Excess Profits Duty”) of an amount equal to fifty per cent. of that excess.

(2) For the purposes of this Part of this Act the accounting period shall be taken to be the period for which the accounts of the trade or business have been made up, and where the accounts of any trade or business have not been made up for any definite period, or for the period for which they have been usually made up, or a year or more has elapsed without accounts being made up, shall be taken to be such period not being less than six months or more than a year ending on such a date as the Commissioners of Inland Revenue may determine.

Where any accounting period is a period of less than a year this section shall have effect as if there were substituted for two hundred pounds a proportionately reduced amount.

(3) Where a person proves that in any accounting period, which ended after the fourth day of August nineteen hundred and fourteen, his profits have not

reached the point which involves liability to excess profits duty, or that he has sustained a loss in his trade or business, he shall be entitled to repayment of such amount paid by him as excess profits duty in respect of any previous accounting period, or to set off against any excess profits duty payable by him in respect of any succeeding accounting period such an amount as will make the total amount of excess profits duty paid by him during the whole period accord with his profits or losses during that period.

Trades and Businesses to which Excess of Profits Duty applies.

39.—The trades and businesses to which this Part of this Act applies are all trades or businesses (whether continuously carried on or not) of any description carried on in the United Kingdom, or owned or carried on in any other place by persons ordinarily resident in the United Kingdom, excepting—

- (a) husbandry in the United Kingdom; and
- (b) offices or employments; and
- (c) any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required, or only capital expenditure of a comparatively small amount,

but including the business of any person taking commissions in respect of any transactions or services rendered, and of any agent of any description (not being a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency).

✓ *Determination of Profits and pre-war standard.*

40.—(1) The profits arising from any trade or business to which this Part of this Act applies shall be separately determined for the purpose of this Part of this Act, but

shall be so determined on the same principles as the profits and gains of the trade or business are or would be determined for the purpose of income-tax, subject to the modifications set out in the First Part of the Fourth Schedule to this Act and to any other provisions of this Act.

(2) The pre-war standard of profits for the purposes of this Part of this Act shall, subject to the provisions of this Act, be taken to be the amount of the profits arising from the trade or business on the average of any two of the three last pre-war trade years, to be selected by the taxpayer (in this Part of this Act referred to as the profits standard): Provided that if it is shown to the satisfaction of the Commissioners of Inland Revenue that that amount was less than the percentage standard as hereinafter defined, the pre-war standard of profits shall be taken to be the percentage standard.

The percentage standard shall, for the purposes of this Part of this Act, be taken to be an amount equal to the statutory percentage on the capital of the trade or business as existing at the end of the last pre-war trade year, subject, however, to the provisions of this Act as to any alteration in the manner of calculating the percentage standard in special cases.

The statutory percentage shall be 6 per cent. in the case of a trade or business carried on or owned by a company or other body corporate, and 7 per cent. in the case of any other trade or business, subject, however, to the provisions of this Act as to the increase in that percentage in certain cases.

The provisions contained in the Second Part of the Fourth Schedule to this Act shall have effect with respect to the computation of the profits of a pre-war trade year, and the provisions contained in the Third Part of the Fourth Schedule shall have effect with respect to the ascertainment of capital for the purposes of this Part of this Act.

“ The last pre-war trade year ” means the year ending at the end of the last accounting period before the fifth day of August nineteen hundred and fourteen, and “ the three last pre-war trade years ” means the three years ending at the three corresponding times.

(3) Where it appears to the Commissioners of Inland Revenue, on the application of a taxpayer in any particular case, that any provisions of the Fourth Schedule to this Act should be modified in his case, owing to a change in the constitution of a partnership or to the postponement or suspension, as a consequence of the present war, of renewals or repairs, or to exceptional depreciation or obsolescence of assets employed in the trade or business due to the present war, or to the necessity in connection with the present war of providing plant which will not be wanted for the purposes of the trade or business after the termination of the war, or to any other special circumstances specified in regulations made by the Treasury, those Commissioners shall have power to allow such modifications of any of the provisions of that schedule as they think necessary in order to meet the particular case.

If the Commissioners refuse, on any such application, to allow any modification, or if the applicant is dissatisfied with any modification allowed, the applicant may require the Commissioners to refer the case to a Board of Referees, to be appointed for the purposes of this Part of this Act by the Treasury, and that Board shall consider any case so referred and have the same powers with respect thereto as the Commissioners have.

Adjustments for increased or decreased Capital.

41.—(1) Where capital has been increased during the accounting period, a deduction shall be made from the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been increased, for the whole accounting period if the increased capital has been employed for the whole accounting

period, and if the increased capital has been employed for part only of the accounting period, for that part of the accounting period.

(2) Where capital has been decreased during the accounting period, an addition shall be made to the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been so decreased, for the whole accounting period, if the capital has been decreased for the whole accounting period, and if the capital has been decreased for part only of the accounting period, for that part of the accounting period.

(3) For the purposes of this section capital shall be taken to be increased or decreased, as the case may be, where the pre-war standard of profits is a profits standard, if the capital employed in the trade or business exceeds or is less than the average amount of capital employed during the pre-war trade years or year by reference to which the profits standard has been arrived at, and, where the pre-war standard of profits is a percentage standard, if the capital exceeds or is less than the capital on which the percentage standard has been calculated.

(4) Where any capital employed in a trade or business which was so employed for the first time within three years before the first day of August nineteen hundred and fourteen has only commenced to be remunerative or fully remunerative in the accounting period, an amount equal to the statutory percentage, or where interest has been earned on the capital, but at a rate less than the statutory percentage, an amount which would bring the interest earned on the capital up to the statutory percentage, as the case may be, shall be added to the profits standard.

Reference to the Board of Referees of Questions as to increase of Percentages, &c.

42.—Where an application is made to the Commissioners of Inland Revenue—

- (1) For an increase of the statutory percentage as respects any class of trade or business, or for a calculation of the percentage standard in the case of any class of trade or business in which the amount of capital actually employed in the trade or business is, owing to the nature of the trade or business, small compared with the capital necessarily at stake for that trade or business, by reference to some factor other than the capital of the trade or business or to some additional factor; or
- (2) For an alteration of the pre-war standard of profits as respects capital employed for the purpose of the manufacture of war materials or for munitions work and which could not be expected to be remunerative or wholly remunerative, except in time of war, in a business which has been wholly or mainly carried on for those purposes;

the Commissioners, unless they are of opinion that the application is frivolous or vexatious or relates to matters already decided by a Board of Referees, shall refer the case to a Board of Referees to be appointed for the purpose of this Part of this Act by the Treasury, and that Board shall deal with the case, and may, by order, if they think fit, increase the statutory percentage or alter the percentage standard for the class of trade or business the subject of the order, or alter the pre-war standard of profits, as the case requires.

On any such order being made, this Part of this Act shall have effect as from the date named in the order as if the percentage or standard named in the order was substituted for the percentage or standard fixed by this Act; and where, in pursuance of any such order, the statutory percentage is increased or the percentage standard is altered as respects any class of trade or business, the statutory percentage shall be increased and the percentage standard shall be altered respectively for

all purposes of this Part of this Act as respects any trade or business belonging to that class.

This section shall apply to any subdivision of a trade or business based either on any special feature of the trade or business or on locality as it applies to a class of trade or business, in any case where the Board of Referees are of opinion that the subdivision can properly be dealt with separately.

Excess Mineral Rights Duty.

43.—(1) Where the amount payable to any person as rent in respect of the right to work minerals or of any mineral wayleaves (in cases where the right to work the minerals and the mineral wayleaves are not part of the assets of any trade or business) varies according to the price of the minerals, and the amount so payable in respect of any working year ending on any date after the commencement of the present war (in this section referred to as the accounting year) exceeds the pre-war standard of that rent, there shall be paid as an addition to any mineral rights duty payable or paid, either directly or by deduction, by reference to the amount of the rent paid in that working year, by that person (in this section referred to as the person liable) an amount equal to fifty per cent. of that excess.

(2) The pre-war standard of rent shall, for the purposes of this section, be taken to be the average of any two of the three last pre-war rent values, to be selected by the taxpayer, and in cases where the minerals have not been worked or the wayleaves have not been let throughout the three years by reference to which the three last pre-war rent values are to be calculated, or for any other reason there are no proper data for ascertaining the pre-war rent values, shall be taken to be such amount as may be fixed by the Commissioners of Inland Revenue, having regard to the data afforded by the working and price of minerals in like circumstances, subject nevertheless to the

same appeal as that to which the assessment of duty by the Commissioners is subject under Part I of the Finance (1909-10) Act, 1910.

The pre-war rent value shall, as respects each of the three years immediately preceding the first accounting year, be taken to be the sum to which the rent for the accounting year would amount if the rent, so far as variable according to price, were based on the average prices governing the payment of the rent in that year.

(3) Any amount payable in any accounting year by the lessee of minerals or wayleaves to a superior lessor as rent in respect of the minerals or wayleaves shall be treated as a deduction from the amount payable to the lessee as rent for that year, and in computing the pre-war rent values a corresponding deduction shall be made on account of any such rent.

(4) Any increment value duty payable annually under Section 22 of the Finance (1909-10) Act, 1910, shall, when paid, be treated as a deduction from the rent payable to any person in the year in which the duty is paid, and a corresponding deduction shall be made in computing the pre-war standard with which the rent for that year is to be compared.

(5) Any duty payable under this section shall be assessed by the Commissioners of Inland Revenue on the person liable, subject to the same appeal as that to which an assessment of duty by the Commissioners under Part I of the Finance (1909-10) Act, 1910, is subject, and shall be recoverable as a debt due to His Majesty from that person.

(6) Subsection (3) of Section 20 of the Finance (1909-10) Act 1910, shall extend so as to authorise particulars to be required of any lease of minerals or wayleaves and as to the sums paid or payable thereunder, and of such other particulars as to the minerals or wayleaves as the Commissioners may require for the purpose of this section.

(7) Expressions to which a special meaning is attached by Part I of the Finance (1909-10) Act, 1910, shall have the same meaning in this section.

Returns for purpose of Part III and Penalty for Fictitious Transactions.

44.—(1) The Commissioners of Inland Revenue may, for the purposes of this Part of this Act, require any person engaged in any trade or business to which this Part of this Act applies, or who was so engaged during any accounting period or pre-war trade year, to furnish them within two months after the requirement for the return is made, with returns of the profits of the trade or business during the accounting period or pre-war trade years and such other particulars in connection with the trade or business as the Commissioners may require.

(2) It shall be the duty of every person chargeable to excess profits duty under this Part of this Act to give notice that he is chargeable to the Commissioners of Inland Revenue before the thirty-first day of January nineteen hundred and sixteen, and it shall be the duty of the liquidator of every company which is being wound up at the time of the commencement of this Act or is wound up after the commencement of this Act, and is chargeable to excess profits duty, to give notice of the fact to the Commissioners of Inland Revenue.

If any person fails to furnish a proper return in accordance with this section or to comply with any requirement of the Commissioners under this section, or to give any notice required by this section, he shall be liable on summary conviction to a fine not exceeding one hundred pounds and to a further fine not exceeding ten pounds a day for every day during which the offence continues after conviction therefor.

(3) A person shall not, for the purpose of avoiding the payment of excess profits duty, enter into any fictitious or artificial transaction or carry out any fictitious or artificial

operation, and if he has entered into any such transaction or carried out any such operation before the commencement of this Act shall inform the Commissioners of Inland Revenue of the nature of the transaction or operation.

If any person acts in contravention of, or fails to comply with, this provision, he shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Supplemental Provisions as to Excess Profits Duty.

45.—(1) The excess profits duty shall be assessed by the Commissioners of Inland Revenue, and shall be payable at any time, not being less than two months, after it is assessed.

The Commissioners may, in any case where they think fit, allow the duty to be paid in instalments of such amount payable at such times as the Commissioners direct.

(2) The duty may be assessed on any person for the time being owning or carrying on the trade or business or acting as agent for that person in carrying on the trade or business, or, where a trade or business has ceased, on the person who owned or carried on the trade or business or acted as agent in carrying on the trade or business immediately before the time at which the trade or business ceased, and where there has been a change of ownership of the trade or business, the Commissioners of Inland Revenue may, if they think fit, take the accounting period as the period ending on the date on which the ownership has so changed and assess the duty on the person who owned or carried on the trade or business or acted as agent for the person carrying on the trade or business at that date.

(3) The amount of duty payable shall be recoverable as a debt due to His Majesty from the person on whom it is assessed.

Any such amount shall if it is less than fifty pounds be recoverable also summarily as a civil debt.

(4) Where a company is wound up after the commencement of this Act, and before the first day of July nineteen hundred and sixteen, and the company would be chargeable with excess profits duty if the provisions of this Act were continued and extended to accounting periods ending before the first day of July nineteen hundred and sixteen, it shall be the duty of the liquidator of the company to give notice to the Commissioners of Inland Revenue, and to set aside such sum out of the assets of the company as appears to the Commissioners of Inland Revenue to be sufficient to provide for any such excess profits duty as may become chargeable.

(5) Any person who is dissatisfied with the amount of any assessment made upon him by the Commissioners of Inland Revenue under this Part of this Act may (except in cases where a special right of appeal is given under this Part of this Act) appeal to the General Commissioners for the division in which he is assessed, or to the Special Commissioners, and those Commissioners shall have power on any appeal, if they think fit, to summon witnesses and examine them upon oath.

The power under Sections 21 and 22 of the Income Tax Act, 1853, to require an appeal in Ireland to the Special Commissioners to be reheard by the County Court Judge, or Chairman of Quarter Sessions, or Recorder, shall apply to an appeal in Ireland under this provision.

Section 59 of the Taxes Management Act, 1880 (which relates to the statement of a case on a point of law), shall apply with the necessary modifications in the case of any appeal to the General or Special Commissioners under this section, or of the rehearing of any such appeal in Ireland, and in the case of a reference to the Board of Referees under this Part of this Act, as it applies in the case of appeals to the General or Special Commissioners under the Income Tax Acts.

(6) The duty assessed by the Commissioners of Inland Revenue shall be payable notwithstanding any appeal under this section except in cases where the Commissioners of Inland Revenue direct to the contrary, but the Commissioners shall make such repayments, if any, as are necessary to give effect to any decision on appeal as soon as possible after such decision has been given.

(7) The Commissioners of Inland Revenue may make regulations with respect to the assessment and collection of the excess profits duty and the hearing of appeals under this section, and may by those regulations apply and adapt any enactments relating to the assessment and collection of income-tax, or the hearing of appeals as to income-tax by the General or Special Commissioners which do not otherwise apply.

(8) All Commissioners and other persons employed for any purpose in connection with the assessment or collection of excess profits duty shall be subject to the same obligations as to secrecy with respect to excess profits duty as those persons are subject to with respect to income-tax, and any oath taken by any such person as to secrecy with respect to income-tax shall be deemed to extend also to secrecy with respect to excess profits duty.

FOURTH SCHEDULE.

PART I.—COMPUTATION OF PROFITS.

1. The profits shall be taken to be the actual profits arising in the accounting period; and the principle of computing profits by reference to any other year or an average of years shall not be followed.

2. The principle of the Income Tax Acts under which deductions are not allowed for interest on money borrowed for the purpose of the trade or business, or for rent, or royalties, or for other payments income-tax on which is collected at the source (not being payments of dividends

or payments for the distribution of profits), and under which profits or gains arising from lands, tenements, or hereditaments forming part of the assets of the trade or business are excluded shall not be followed.

3. Deductions for wear and tear or for any expenditure of a capital nature for renewals, or for the development of the trade or business or otherwise in respect of the trade or business, shall not be allowed except such as may be allowed under the Income Tax Acts, and if allowed shall be only of such amount as appears to the Commissioners of Inland Revenue to be reasonably and properly attributable to the year or accounting period.

4. Deductions shall not be allowed on account of the liability to pay, or the payment of, income-tax or excess profits duty, but a deduction shall be allowed (if not otherwise allowed by means of the adoption of the principle of the Income Tax Acts) for any sum which has been paid in respect of the profits on account of any excess profits duty or similar duty imposed in any country outside the United Kingdom.

5. Any deduction allowed for the remuneration of directors, managers, and persons concerned in the management of a trade or business shall not, unless the Commissioners of Inland Revenue, owing to any special circumstances or to the fact that the remuneration of any managers or managing directors depends on the profits of the trade or business, otherwise direct, exceed the sums allowed for those purposes in the last pre-war trade year or a proportionate part thereof as the case requires, and no deduction shall be allowed in respect of any transaction or operation of any nature, where it appears, or to the extent to which it appears, that the transaction or operation has artificially reduced the amount to be taken as the amount of the profits of the trade or business for the purposes of this Act.

6. Where any company, either in its own name or that of a nominee, owns the whole of the ordinary capital of any other company carrying on the same trade or business or so much of that capital as under the general law a single shareholder can legally own, the provisions of Part III of this Act as to excess profits duty and the pre-war standard of profits shall apply as if that other company were a branch of the first-named company, and the profits of the two companies shall not be separately assessed.

7.—Where in the case of any trade or business—

- (a) the percentage standard is adopted as the pre-war standard of profits; and
- (b) the net result of the trade or business during the three last pre-war trade years has shown a loss; and
- (c) any part of the profits has been applied in extinction of that loss;

then in estimating the profits a deduction shall be allowed equal to the amount of profits so applied.

8.—In estimating the profits no account shall be taken of income received from investments except in the case of life assurance businesses and businesses where the principal business consists of the making of investments. Where account is taken of any such income—

- (a) any variation in the value of any of those investments which appears to the Commissioners of Inland Revenue not to be due to a variation in profits shall also be taken into account; and
- (b) where the income has been derived from profits in respect of which any payment or repayment of excess profits duty has been made under this Act, such deduction or addition shall be made in computing the profits as will make proper allowance for that payment or repayment of duty.

9.—In computing the total profits of a local authority from any trades or businesses carried on by that authority

the total amount which is required to be raised by them, out of the rates or otherwise, for sinking fund purposes in connection with those trades or businesses shall be allowed as a deduction.

10.—In the case of societies registered under the Industrial and Provident Societies Acts the excess profits duty shall be charged on the sum by which the profits per member for the accounting period (including any surplus arising from transactions with members) exceed the like profits per member in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits, multiplied by the number of members in the accounting period.

11.—In the case of any contract extending beyond one accounting period from the date of its commencement to the completion thereof and only partially performed in any accounting period there shall (unless the Commissioners of Inland Revenue, owing to any special circumstances, otherwise direct) be attributed to each of the accounting periods in which such contract was partially performed, such proportion of the entire profits or loss or estimated profits or loss in respect of the complete performance of the contract as shall be properly attributable to such accounting periods respectively, having regard to the extent to which the contract was performed in such periods.

PART II.—PRE-WAR STANDARD.

1. The profits of any pre-war trade year shall be computed on the same principles and subject to the same provisions as the profits of the accounting period are computed.

2. Where the accounting period for which the excess profits duty is to be assessed is less than a year, the amount of the pre-war standard of profits shall be proportionately reduced.

3. Where it is shown to the satisfaction of the Commissioners of Inland Revenue in the case of any trade or business that the three last pre-war trade years have been years of abnormal depression, any four of the last six pre-war trade years may be substituted for the purposes of the pre-war standard of profits for any two of the three last pre-war trade years.

The three last pre-war trade years shall not be considered as years of abnormal depression unless the average profits of those years have been at least twenty-five per cent. lower than the average profits of the preceding three years.

4. Where owing to the recent commencement of a trade or business there have not been three pre-war trade years, but there have been two pre-war trade years, the pre-war standard of profits shall be taken to be the amount of the profits arising from the trade or business on the average of those two years or, at the option of the taxpayer, the profits arising from the trade or business during the last of those two years, and where there have not been two pre-war trade years, but there has been one pre-war trade year, the pre-war standard of profits shall be taken to be the profits arising from the trade or business during that year; and where there has not been one pre-war trade year, the pre-war standard of profits shall be taken to be the statutory percentage on the average amount of capital employed in the trade or business during the accounting period.

Where the trade or business is an agency or business of a nature involving capital of a comparatively small amount, the pre-war standard of profits shall be computed by reference to the profits arising from any trade, business, office, employment, or profession of any sort, whether liable to excess profits duty or not, carried on by the agent or other person before his new trade or business commenced as if it was the same trade or business; but only to the extent to which the income from the former trade,

business, office, employment or profession has been diminished.

5. Where since the commencement of the three last pre-war trade years a trade or business has changed ownership, the provisions of this Part of this Schedule shall apply as if a new trade or business had been commenced on the change of ownership, except in cases when the taxpayer makes an application that the provisions of Part III of this Act and this Schedule should apply as if the trade or business had not changed ownership, but in that case such modifications (if any) shall be made in the application of this Schedule as may be necessary to make the basis on which the profits standard is computed the same as that on which the profits of the accounting period are computed.

6. It is hereby declared that, where any business or trade is confined to the management of any particular assets, but power exists to substitute other assets for those particular assets or any of them, such a substitution shall not be deemed, for the purposes of Part III of this Act, to constitute a change of ownership of the business; but, where any such substitution has been carried out by the sale of assets and the purchase of other assets, the capital of the trade or business shall be taken to be increased or decreased, as the case may be, only by the amount of the difference between the price of the assets purchased and the price obtained for the assets sold, and the capital representing the assets purchased shall be estimated on the same basis for all the purposes of Part III of this Act.

PART III.—CAPITAL.

1. The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

- (a) so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to any proper deductions for wear and tear or replacement, or for unpaid purchase money; and

- (b) so far as it consists of assets being debts due to the trade or business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for income-tax purposes; and
- (c) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the trade or business, subject to any proper deductions for wear and tear or replacement.

Nothing in this Part of this Schedule shall prevent accumulated profits employed in the business being treated as capital.

2. Any capital the income on which is not taken into account for the purposes of Part I of this Schedule, and any borrowed money or debts, shall be deducted in computing the amount of capital for the purposes of Part III of this Act

3. Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where a trade or business has been converted into a company and the shares in the company are wholly or mainly held by the person who was owner of the trade or business, no value shall be attached to those shares so far as they are represented by goodwill or otherwise than by material assets of the company unless the Commissioners of Inland Revenue in special circumstances otherwise direct. Patents and secret processes shall be deemed to be material assets.

COMPUTATION OF PROFITS AND GAINS IN RELATION TO EXCESS PROFITS DUTY.

35.—(1) Where any person has paid excess profits duty under this Act the amount so paid shall be allowed as a deduction for the purpose of income-tax in computing the profits and gains of the year which included the end of

the accounting period in respect of which the excess profits duty has been paid; but where any person has received repayment of any amount previously paid by him by way of excess profits duty, the amount repaid shall be treated as profit for the year in which the repayment is received.

The payment of excess profits duty shall not be deemed to be a specific cause for the purposes of Section 134 of the Income Tax Act, 1842.

(2) Where in any income-tax year the profits or gains from which a deduction may be made under this section come into computation, but owing to the time at which the amount of excess profits duty became ascertained it was impracticable to give effect to the deduction when assessing income-tax, the amount by which the income-tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for excess profits duty or, if there is no excess profits duty, shall be repaid to the taxpayer.

TO THE
GENERAL ASSEMBLY OF THE
STATE OF NEW YORK

APPENDIX II.

EXCESS PROFITS DUTY.

Regulations prescribed by the Commissioners of Inland Revenue under Section 45, Subsection (7), of the Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89).

1. Subject to the express provisions of the Act and these Regulations, the Sections of the Income Tax Acts enumerated in the Schedule to these Regulations shall, with the modifications therein described, apply to the assessment and collection of Excess Profits Duty and the hearing of appeals in connection therewith.

2. If in any case any person required by law to make a return fails to do so, or if the return made by him appears to the Commissioners of Inland Revenue to be incorrect or insufficient, the Commissioners may, without prejudice to the enforcement of any penalty which may have been incurred, make an assessment of Excess Profits Duty according to the best of their judgment.

3. Notice of an assessment shall be served on the person charged or on the person in whose name he is charged.

4. A notice of assessment under the Act may be delivered to the person on whom it is intended to be served, or served upon him by post.

Service by post in this Regulation shall have the same meaning as in the Interpretation Act, 1889.

5. Any person dissatisfied with the amount of any assessment made upon him may at any time within thirty days from the date of the service of notice of assessment, or within such further time

as the Commissioners of Inland Revenue may allow, give notice to the Surveyor of Taxes named in the notice of assessment of his intention to appeal against the amount of the assessment, and every such notice shall specify the grounds of appeal, and, in England, Scotland, and Wales, whether the appellant desires that the appeal shall be heard by the General Commissioners or the Special Commissioners.

6. With reference to any notice of appeal and to the hearing of an appeal, the General or Special Commissioners as the case may be, shall, subject to the provisions of the Act, and to any Regulations made thereunder, have all such powers in relation to any matter of appeal as are possessed by them in relation to notices of appeal and the hearing of appeals under any Act for the time being in force relating to income-tax. The General or Special Commissioners shall certify in writing to the appellant and to the Commissioners of Inland Revenue after determining any appeal their decision and the amount, if any, by which any assessment has been thereby altered.

7. The Commissioners of Inland Revenue may be represented on the hearing of an appeal by any person nominated in that behalf by them, and any person so nominated shall have the same powers with reference to appeals as may for the time being be exercised by a Surveyor of Taxes with reference to appeals relating to income-tax.

8. A Surveyor of Taxes may for any purpose in connection with the assessment and collection of the Duty and the hearing of appeals make use of or produce in evidence any returns, correspondence, schedules, accounts, statements, or other documents to which he has had or may have

lawful access for the purposes of income-tax, and shall have the same right to examine all accounts, schedules, and statements furnished to the General or Special Commissioners as he has in the case of appeals relating to income-tax.

9. Any barrister or solicitor or member of an incorporated society of accountants may be heard by the General or Special Commissioners on an appeal.

10. No Commissioner interested in his own right, or in the right of any other person, in any matter under appeal shall take part in or be present at the hearing or determination thereof.

11. The Commissioners of Inland Revenue may make additional assessments in any case where they deem it necessary at any time within three years from the date of the first assessment :

Provided that no such additional assessment shall be made in any case where an assessment has been reduced by the General or Special Commissioners upon an appeal or by any Court by which an appeal has been re-heard.

12. Any notices required to be given to the Commissioners of Inland Revenue may be given either to the Commissioners at their principal office in London, or to the Surveyor of Taxes acting for the district in which the person giving such notice resides or carries on business.

13. In these Regulations, unless the context otherwise requires, the expression "Surveyor of Taxes" means a Surveyor as defined by the Taxes Management Act, 1880, and "the Act" means the Finance (No. 2) Act, 1915.

By order of the Commissioners of Inland Revenue.

P. THOMPSON,

6th January 1916.

Secretary.

SCHEDULE.

Income Tax Act, 1842 (5 & 6 Vict., c. 35) :—

Section 40.

„ 41, save in so far as it relates to a married woman.

„ 44.

„ 51, save in so far as it relates to a married woman.

„ 100, Schedule D, Rules applying to the first and second cases of that schedule, Rule 3, down to and including the words “and
“no separate statement shall be allowed
“in any case of partnership.”

Taxes Management Act, 1880 (43 & 44 Vict., c. 19) :—

Section 15, Subsections (2) and (5).

„ 55, down to and including the words “the
“several particulars on which the charge
“is made.”

Finance Act, 1907 (7 Ed. 7, c. 13) :—

Section 22, Subsection (2).

Finance Act, 1914 (4 & 5 Geo. 5, c. 10) :—

Section 10, Subsection (2).

Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89) :—

Section 31.

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